

BERYL RHODES

IBLA 80-326

Decided March 31, 1980

Appeal from decision of the Utah State Office, Bureau of Land Management, declining to record notice of location for unpatented mining claim, Peaches Mine, 3833 (Utah).

Affirmed.

1. Federal Land Policy and Management Act of 1976: Generally --  
Federal Land Policy and Management Act of 1976: Recordation of  
Mining Claims and Abandonment -- Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a lode mining claim, located after Oct. 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management Office within 90 days of location of the claim. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

APPEARANCES: Beryl Rhodes, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Beryl Rhodes has appealed from a decision dated January 18, 1980, by the Utah State Office, Bureau of Land Management (BLM), declining to record a notice of location for an unpatented mining claim, the Peaches Mine, on the basis that the notice was not filed within 90 days after the date of location as required by 43 CFR 3833.1-2(b).

The notice of location indicates that the claim was located on October 7, 1979. BLM received a copy of the notice on January 8, 1980.

Section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), requires the owner of an unpatented lode or placer mining claim located after October 21, 1976, to file a copy of the official record of the notice of location in the BLM office designated by the Secretary of the Interior within 90 days after the date of the location. It also provides that failure to timely file such record shall be deemed conclusively to constitute an abandonment of the mining claim by the owner and renders the claim void.

The pertinent regulation, 43 CFR 3833.1-2(b), provides as follows:

The owner of an unpatented mining claim, mill site, or tunnel site located after October 21, 1976, on Federal land shall file (file shall mean being received and date stamped by the proper BLM office), within 90 days after the date of location of that claim in the proper BLM office a copy of the official record of the notice or certificate of location \* \* \*.

Appellant claims that she knew nothing of the 90-day filing requirement because she was near death in a hospital. She also states that she has now recovered and is able to handle her business. <sup>1/</sup>

[1] Under FLPMA and the regulations, the requirements for filing are clear. The Board has repeatedly held that when a notice of location for a mining claim located after the enactment of FLPMA, is not filed with BLM with 90 days from the date of location, it has no force and effect and must be returned to the appellant. Faith C. Hartman, 44 IBLA 310 (1979); M. J. Reeves, 41 IBLA 92 (1979); William E. Rhodes, 38 IBLA 127 (1978); R. Wade Holder, 35 IBLA 169 (1978). The claim must be deemed conclusively to have been abandoned and void under the terms of the statute. 43 U.S.C. § 1744(c) (1976); Phillip M. Gardiner, 41 IBLA 391 (1979).

Appellant's grave illness is an unfortunate circumstance, but the Board has no authority to excuse the lack of compliance which may have been due, in part, to such illness. Nor can unawareness of the recordation requirements provide a basis for noncompliance with the law. See Hartman, supra, and cases cited.

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<sup>1/</sup> Appellant states also that she has "recorded relocation" of the claim in issue every year since August 30, 1965. The documents in the file do not indicate that the claim's history goes back to 1965. It may be that appellant is referring to assessment work procedures carried out under Utah State laws. In any event, even if the claim had been located prior to October 21, 1976, a copy of the notice or certificate of location would still have to have been filed in the proper BLM office on or before October 22, 1979. 43 CFR 3833.1-2.

Appellant may, however, relocate her claim and file the notice required by 43 CFR 3833.1, subject to any intervening rights of third parties, and assuming no intervening closure of the land to mineral location.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman  
Administrative Judge

We concur:

Douglas E. Henriques  
Administrative Judge

Anne Poindexter Lewis  
Administrative Judge

